



[3410-11-P]

## **DEPARTMENT OF AGRICULTURE**

### **Forest Service**

#### **Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of contract extensions

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**SUMMARY:** The Chief of the Forest Service has determined there is a Substantial Overriding Public Interest (SOPI) in extending for up to 1 year certain National Forest System FS-2400-6/6T and FS-2400-13/13T contracts that terminate on or before December 31, 2013 and meet one or more of the following conditions; (1) require removal of biomass material, (2) require removal of balsam fir, (3) have been appraised to a processing facility that has permanently closed, or (4) have been appraised to a processing facility that has not operated for at least 6 months prior to requesting an extension under this authority.

The intended effects of the SOPI finding and contract extensions are to minimize contract defaults, mill closures, and company bankruptcies while the Forest Service assesses markets to determine if other relief measures are needed. The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with Forest Service authorizing legislation. See Act of

June 4, 1897 (Ch. 2, 30 Stat. 11 as amended, 16 U.S.C. 475) (Organic Administration Act).

**DATES:** The determination was made on **[Insert date of publication in the Federal Register]**, by the Chief of the Forest Service.

**FOR FURTHER INFORMATION CONTACT:** Lathrop Smith, Forest Management Staff, 970-295-5961 or Richard Fitzgerald, Forest Management Staff 202-205-1753; 1400 Independence Ave., S.W., Mailstop 1103, Washington, DC 20250-1103.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Forest Service sells timber and forest products from National Forest System lands to individuals and companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA). Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract sets forth the explicit terms of the sale including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, road construction and logging requirements, and environmental protection measures to be taken. The average contract period is approximately 2 to 3 years, although some contracts may have terms of 5 or more years.

The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of 2 years or more unless, he finds that the purchaser has diligently performed in

accordance with an approved plan of operations, or that the “Substantial Overriding Public Interest” justifies the extension.

The Forest Service timber sale contracts specify the estimated volume and utilization standards for material that is required to be cut and removed. Specifying what material to remove or leave is dependent upon a variety of factors including the resource management objectives stated in the project decision documents, available markets for the material to be treated and economic factors associated with different treatment options. Each sale has its own set of resource and economic factors affecting what material will be cut and removed. In recent years, there has been an increased emphasis on including biomass material in timber sale contracts as a method of reducing fire danger by removing hazardous fuels. On June 1, 2012, there were 98 National Forest System timber sales under contract in California that included the required removal of biomass material. Twenty-nine of these sales had the biomass appraised to facilities that are either not currently accepting material or are closed indefinitely, and an additional 15 sales had the biomass appraised to facilities that have been permanently closed. Twenty-one of these sales have contract termination dates of 12/31/2013 or sooner.

In response to concerns raised by 30 purchasers, on July 9, 2012, Congressmen Tom McClintock and Walter Herger wrote the Chief, US Forest Service urging him to consider using administrative authorities under 36 CFR 223 to extend contract terms, modify contract terms, or cancel contracts where there is mutual agreement to do so, provided that the taxpayers are unaffected by the revisions. They noted that if the problems with existing contracts are ignored, there will be a substantial number of defaults leaving the Forest Service with partially completed projects that will be difficult,

and costly to complete in the future. While the focus of their letter addressed marketing problems purchasers were experiencing where biomass facilities had closed, they were also concerned about impacts to purchasers where sawmills had closed.

In August 2012, the Verso paper mill in Sartell, Minnesota, and the Georgia-Pacific hardboard plant in Duluth, Minnesota, both shut down permanently, putting more than 400 people out of work. The plant closings were among the latest blows to an industry that has been on the ropes since the last recession began. In all, six mills or about a third of the industry have closed over the past 5 years according to an August 31, 2012, Minnesota Public Radio article. Particularly hard hit by the Minnesota mill closures is an almost complete loss of markets for balsam fir.

Accordingly, and in recognition that the problems in California and Minnesota may apply to contracts in other parts of the country, the Chief, US Forest Service has determined that there is a SOPI for extending up to 1 year certain National Forest System FS-2400-6/6T and FS-2400-13/13T contracts. This will allow any purchaser with a qualifying National Forest System FS-2400-6/6T timber sale or FS-2400-13/13T stewardship contract to defer operations while the Forest Service evaluates market conditions to determine if additional market related relief measures are needed. To be eligible, a contract must terminate on or before December 31, 2013, and meet at least one of the following conditions; (1) require removal of biomass material, (2) require removal of balsam fir, (3) have been appraised to a processing facility that has permanently closed, or (4) have been appraised to a processing facility that has not operated for at least 6 months prior to requesting an extension under this authority. This finding does not apply to (1) salvage sale contracts that were sold with the objective of harvesting

deteriorating timber, (2) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that developed following award of the contract, (3) contracts that are in urgent need of harvesting to accomplish fuel reduction objectives in wildland urban interface areas, (4) contracts with an original term of less than 2 years, (5) contracts that are in breach, or (6) contracts when the purchaser's processing facility has not operated during the preceding 6 months for reasons qualifying for a contract term addition. For contracts extended pursuant to this finding, periodic payment dates that have not been reached shall be adjusted 1 day for each additional day of contract time granted. Total contract length shall not exceed 10 years including this extension. To receive an extension and periodic payment deferral, purchasers must make a written request to the appropriate Contracting Officer prior to November 30, 2013. Purchasers must also agree to release the Forest Service from all claims and liability if a contract is suspended, modified, or terminated after a contract is extended pursuant to this SOPI.

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Thomas L. Tidwell,  
Chief, Forest Service.

\_\_\_\_October 16, 2012\_\_\_\_

(Date)

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